



**FOR IMMEDIATE RELEASE:**  
Monday, September 24, 2012

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## **Maryland and Federal Authorities Prosecute Water Polluters Too Rarely and Penalties for Convictions Lack Deterrent Punch, CPR Report Says**

### *State and Federal Government Could and Should Emphasize More Deterrence-Based Enforcement and Prosecute More Violators to Protect Rivers and Chesapeake Bay*

(Washington) – Maryland and federal authorities prosecute polluters who break clean water laws in the state too rarely to effectively deter lawbreakers, largely foregoing a key tool to protect the state’s waters, a new report from the Center for Progressive Reform (CPR) says. The report analyzed years of state and federal environmental crime prosecution data.

“Criminal prosecutions are an effective way to improve enforcement of our environmental laws, and that’s what the Chesapeake Bay and the economies that depend on it sorely need,” said Rena Steinzor, CPR President and Professor at the University of Maryland Carey School of Law, who authored the paper with CPR Policy Analyst Aimee Simpson. “Relatively painless civil fines alone aren’t enough to deter polluters, because they can just be treated as a mere business cost. Criminal penalties would get polluters’ attention, if the state and federal government started using them enough for them to be a credible deterrent.”

Environmental enforcement by states and the federal government most often involves civil or administrative actions, which primarily result in monetary fines. Criminal enforcement, on the other hand, can lead to more serious penalties, including incarceration, extensive probationary periods, license suspensions, and debarment from future government contracts. These penalties have a proven record of greater deterrence than monetary civil penalties, which are often simply factored into bottom-line business costs.

The CPR report, [\*Going Too Easy? Maryland’s Criminal Enforcement of Water Pollution Laws Protecting the Chesapeake Bay\*](#), examined prosecutions under the Clean Water Act (CWA) and state water pollution laws, both by the state of Maryland and by federal prosecutors in Maryland. Among the findings:

- From 1988-2011, EPA data show the federal government concluded 11 CWA-based cases in Maryland, and a total of 20 water-pollution related cases. During the past five years, these cases shifted away from CWA-based charges to those involving violations of maritime laws (Act to Prevent Pollution from Ships (APPS) and the Marine Pollution (MARPOL) Protocols), focusing on a narrow subset of Bay pollution.
- Nationwide, the federal government has increased its closure of environmental cases over the last decade, but the number of Clean Water Act (CWA) cases concluded has

remained relatively stable, making those cases a smaller portion of the total. The size of the enforcement job for regulators, meanwhile, has increased with a growing economy.

- Several sectors that are top polluters of the Chesapeake Bay, such as urban regulated runoff, wastewater and sewage treatment plants, and certain kinds of agriculture, have been prosecuted extremely rarely.
- Maryland state authorities concluded more water-related criminal cases in 2011 (16) than in previous years, but overall the state has not had a sustained emphasis on water-related criminal enforcement in the last decade, averaging about eight case closures per year from 1998-2011.
- Federal and state courts rarely impose incarceration for water pollution-based convictions, reducing the deterrence value of criminal enforcement for these kinds of offenses.

Several stakeholders interviewed by the report authors suggested that Maryland's environmental criminal enforcement framework, resources, and priorities had experienced significant changes since the disbanding of the environmental crimes section within the U.S. Attorney's Office in the District of Maryland at the end of 2001 and since the events of September 11, 2001, which caused a nationwide shift toward criminal enforcement focused on terrorism and homeland security.

The report says that increased criminal enforcement efforts on water pollution would require more resources, but would be an effective investment. The report recommends:

- State and federal authorities should use their criminal enforcement power more frequently, stopping individual lawbreakers and creating a more powerful deterrent effect – as the law intended.
- Federal and state authorities should increase their focus on problem pollution sources for the Bay, such as regulated construction, Concentrated Animal Feeding Operations (CAFOs), and some kinds of wastewater treatment plants, giving greater consideration to criminal enforcement against these pollution sources.
- Federal and state legislators should increase funding and resources for environmental enforcement.
- Federal and state enforcement authorities should restore environmental prosecution priorities, develop more open lines of communication, and collaborate on water pollution criminal enforcement policies and procedures with an emphasis on Bay-oriented enforcement. This includes participating in a Chesapeake Bay criminal enforcement task force, increasing inter-agency and cross-jurisdictional referrals, and strengthening internal policies and procedures.
- Federal and state authorities should continue efforts to make clearly defined, consistent, and comprehensive criminal enforcement data available to the public through annual reports, databases, and press releases. All potential polluters must be aware that the enforcement is occurring and that there is the potential for being caught and facing significant penalties.

The report is available on CPR's website at:

[http://www.progressivereform.org/articles/MD\\_ChesBay\\_Crim\\_Enforcement\\_1212.pdf](http://www.progressivereform.org/articles/MD_ChesBay_Crim_Enforcement_1212.pdf)

*The Center for Progressive Reform ([www.progressivereform.org](http://www.progressivereform.org)) is a nonprofit research and educational organization dedicated to protecting health, safety, and the environment through analysis and commentary. Visit CPR on the web at [www.progressivereform.org](http://www.progressivereform.org) and read CPRBlog at [www.progressivereform.org/cprblog](http://www.progressivereform.org/cprblog).*

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